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Ihsan Azzam, Chief Medical Officer
of the State of Nevada.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ZANE M. FLOYD,

Plaintiff,

vs.

CHARLES DANIELS, *et al.*,

Defendants.

Case No. 3:21-cv-00176-RFB-CLB

**Dr. Azzam's Opposition to Floyd's Motion
for Temporary Restraining Order with
Notice and Preliminary Injunction and
Joinder in NDOC Defendants' Opposition
to Floyd's Motion for Temporary
Restraining Order with Notice and
Preliminary Injunction**

Defendant, Dr. Ihsan Azzam, Chief Medical Officer, by and through
counsel Aaron D. Ford, Attorney General of the State of Nevada, and Julie
A. Slabaugh, Chief Deputy Attorney General, submits his Opposition to
Plaintiff Zane M. Floyd's Motion for Temporary Restraining Order with
Notice and Preliminary Injunction and Joinder in NDOC Defendants'
Opposition to Floyd's Motion for Temporary Restraining Order with Notice
and Preliminary Injunction.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction.

On April 14, 2021, the Clark County District Attorney's Office filed a motion in the
Eighth Judicial District Court, State of Nevada, seeking a "Second Supplemental Order of

Execution” and a “Second Supplemental Warrant of Execution” against Floyd. (ECF No. 11-1 at 2-7.) On April 16, 2021, Floyd filed his Complaint for Injunctive and Declaratory Relief Due to Proposed Method of Execution Pursuant to 42 U.S.C. §1983. (ECF No. 2.) In his Complaint, Floyd names various officials of the Nevada Department of Corrections (“DOC”) and Dr. Ihsan Azzam, Chief Medical Officer of the State of Nevada as Defendants. Floyd’s Complaint is devoid of any factual allegations against Dr. Azzam.¹

On April 16, 2021, Floyd also filed his Motion for Temporary Restraining Order with Notice and Preliminary Injunction (“TRO Motion”). (ECF No. 5 & 6.)² Dr. Azzam now joins NDOC Defendants’ Opposition (ECF No. 23) in its entirety and submits his Opposition to Floyd’s Motion and Joinder in NDOC Defendant’s Opposition to his Motion.

B. The relief requested in Floyd’s Motion for Temporary Restraining Order with Notice and Preliminary Injunction is not directed at Dr. Azzam.

An injunction is a means by which a court tells someone what to or not to do. “When a court employs ‘the extraordinary remedy of injunction’ . . . it directs the conduct of a party, and does so with the backing of its full coercive powers. *See* BLACK’S LAW DICTIONARY 784 (6th ed.1990) (defining “injunction” as “[a] court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury”).” *Nken v. Holder*, 556 U.S. 418, 428, (2009) (internal citation omitted); *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (“[An] injunction is the means by which a court ‘directs the conduct of a party’”) (quoting *Nken*, 556 U.S. at 428; *see also East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640 (9th Cir. 2021).

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¹ The lack of any factual allegations against Dr. Azzam will be the subject of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) to be filed on or before May 7, 2021.

² Since ECF Nos. 5 and 6 are identical only ECF No. 5 will be referred to in this response.

1 Dr. Azzam's duties as Chief Medical Officer are set forth in NRS
2 439.130 which provides in applicable part:

3 1. The Chief Medical Officer shall:

4 (a) Enforce all of the laws and regulations pertaining to
5 public health.

6 (b) Investigate causes of disease, epidemics, source of
7 mortality, nuisances affecting the public health, and all other
8 matters related to the health and life of the people, and to this
9 end the Chief Medical Officer may enter upon and inspect any
10 public or private property in the State.

11 (c) Oversee the operation of facilities and centers
12 established pursuant to title 39 of NRS.³

13 (d) Direct the work of subordinates and may authorize them
14 to act in his place and stead.

15 (e) Except as otherwise provided in subsection 5 of NRS
16 439.970, perform the duties prescribed in NRS 439.950 to
17 439.983, inclusive.⁴

18 (f) Perform other such duties as the Director may, from
19 time to time, prescribe.⁵

20 In his TRO Motion, Floyd refers only to Charles Daniels, Director of
21 the Nevada Department of Corrections and William Gittere, Warden of the
22 Ely State Prison as the Defendants who are charged with carrying out the
23 execution. (ECF No. 5, at 3:15-18.) The relief Floyd requests in his TRO
24 Motion is for this Court to enjoin the Defendants from attempting to
25 implement any aspect of Nevada's execution protocol against him. (ECF No.
26 5, at 14:6-9.)

27 Nevada's statute addressing lethal injection states that Director
28 Daniels must '[s]elect the drug or combination of drugs to be used for the
execution after consulting with the Chief Medical Officer.'" NRS

³ Title 39 contains the NRS chapters pertaining to Behavioral Health.

⁴ NRS 439.950 to 439.983 are the statutes pertaining to public health emergencies and other health events.

⁵ The Director is the Director of the Department of Health and Human Services. NRS 439.005(2)&(3).

1 176.355(2)(b). That is the only involvement the Chief Medical Officer has in
2 the execution process. Dr. Azzam has no authority over executions in
3 Nevada and no role in the implementation of Nevada's execution protocol
4 against Floyd. Therefore, there is no conduct on the part of Dr. Azzam for
5 this Court to enjoin. To the extent Floyd's TRO Motion asks this Court to
6 enjoin any conduct by Dr. Azzam, it should be denied.

7 **C. Conclusion**

8 Because the duties of Dr. Azzam as Chief Medical Officer of the State
9 of Nevada do not include any role in implementation of Nevada's execution
10 protocol Floyd's request for injunctive relief against Dr. Azzam should be
11 denied.

12 DATED this 30th day of April, 2021.

13 AARON D. FORD
14 Attorney General

15 By:

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17 JULIE SLABAUGH (Bar No. 5783)
18 Chief Deputy Attorney General
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 30th day of April, 2021, I served a true and correct copy of the foregoing “Dr. Azzam’s Opposition to Floyd’s Motion for Temporary Restraining Order with Notice and Preliminary Injunction and Joinder in NDOC Defendants’ Opposition to Floyd’s Motion for Temporary Restraining Order with Notice and Preliminary Injunction” by U.S. District Court CM/ECF electronic filing to:

Rene L. Valladares
Federal Public Defender

David Anthony
Assistant Federal Public Defender

Brad D. Levenson
Assistant Federal Public Defender

Timothy R. Payne
Assistant Federal Public Defender

D. Randall Gilmer
Chief Deputy Attorney General


